IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

:: J U D G M E N T ::

1. D.B. CIVIL SPECIAL APPEAL (W) NO.236/2006
(Smt. Sameera Bano Vs. State of Rajasthan & Ors.)

2. D.B. CIVIL SPECIAL APPEAL (W) NO.276/2006
(Udai Bhan Singh Gurjar Vs. Shri Dinesh Chand)

3. D.B. CIVIL SPECIAL APPEAL (W) NO.289/2006
(State of Rajasthan & Ors. Vs. Dinesh Chand & Anr.)
Date of Judgment :: 2nd April, 2007

REPORTABLE

P R E S E N T

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE SHRI JUSTICE ASHOK PARIHAR
HON'BLE SHRI JUSTICE AJAY RASTOGI
::

Dr. P.C. Jain]
Shri R.S. Rathore] for the appellants.
Shri A.K. Bhandari]
Shri J.S. Rastogi]

Shri Manish Bhandari]
Shri M.M. Ranjan]
Shri Suresh Sahni]for the respondents.
Shri Alok Sharma]

Shri Bharat Vyas, AAG for the State.

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BY THE COURT (PER HON'BLE THE CHIEF JUSTICE)

A significant question of law – whether the dispute relating to any pre-election disqualification can be adjudicated only in an election petition before the District Judge under Section 43 of the Rajasthan Panchayati Raj Act, 1994 read with rule 80 of the

Rajasthan Panchayati Raj (Election) Rules, 1994 or it can also be adjudicated by the authority under rule 23 of the Rajasthan Panchayati Raj Rules, 1996 read with Section 39 (2) of the Rajasthan Panchayati Raj Act, 1994 – is involved in these three special appeals. The point being common the appeals were heard together and are disposed of by this common judgment.

The representative facts may be noticed from D.B. Special Appeal (W) No.236/2006 which was argued as the leading case.

The appellant filed writ petition, S.B. Civil Writ Petition no.9758/2005, for quashing the enquiry initiated by the Chief Executive Officer (CEO), Zila Parishad Jhunjhunu. She was informed that the preliminary enquiry held by the Additional Chief Executive Officer, Zila Parishad Jhunjhunu disclosed that third child was born to the appellant after 27.11.1995; if she so desired, she could appear for personal hearing on the date fixed viz 16.12.1995, and submit her show-cause and produce evidence failing which the enquiry would be concluded ex-parte. It is relevant to mention here that having more than two children – born after 27.11.1995 - is a disqualification for election as *panch* or member of

the Panchayati Raj Institution under Section 19 (l) of the Rajasthan Panchayati Raj Act, 1994 (hereinafter referred to as ‘the Act’).

The election in question was held in the month of January 2005. The appellant contested the election and was elected as *Sarpanch* of Gram Panchayat Bheemsar within Panchayat Samiti Jhunjhunu. According to the respondents, by reason of the birth of the third child after 27.11.2005 she was disqualified from contesting the election and she was therefore not entitled to continue in office. Challenging the authority of the CEO to make any enquiry in respect of pre-election disqualification the appellant filed the writ petition. She also prayed for stay of enquiry proceedings. It was submitted before the learned Single Judge that there was conflict of opinion on the point and some petitions had been referred to larger Bench to resolve the dispute. The writ petition of the appellant was admitted to hearing on 27.2.2006. By a separate order on the same day the learned Single Judge declined to stay the enquiry observing that the appellant can challenge the findings of the enquiry in revision under Section 97 of the Act. Challenging the said order dated 27.2.2006 the appellant has come to Division Bench in this appeal contending inter alia that in similar

cases enquiry has been stayed by this Court.

On 18.5.2006 the Division Bench observed that the case involves questions of law which need to be decided and considering that office of *Sarpanch* has a fixed term, the appeal may be finally decided at the stage of admission itself lest the exercise may become infructuous. Later, by order dated 25.7.2006 after a detailed hearing, the Division Bench referred the case to larger Bench so that conflict between different judgments, if any, may be resolved and an authoritative pronouncement is made on the point. That is how the case came before this Bench.

D.B. Civil Special Appeal (W) nos.276/2006 and 289/2006 are converse cases at the instance of the complainant and the State, respectively, challenging the interim order of the learned Single Judge dated 20.12.2005 in S.B. Civil Writ Petition no.9558/2005 staying the order of the State Government dated 28.11.2005 by which the writ petitioner/respondent, Dinesh Chand, was removed from the office of Pradhan, Panchayat Samiti Baseri on receipt of the enquiry report of CEO Zila Parishad, Dholpur holding that he was disqualified for election as he had more than two

children after 27.11.2005.

The aforesaid order was passed or notice issued in connection with enquiry under rule 23 of the Rajasthan Panchayati Raj Rules (in short, 'the Rules') read with sub-section (2) of Section 39 of the Act. Before noticing these provisions, it would be appropriate to make some introductory remarks and refer to the relevant provisions of the Act.

The Panchayats and Municipalities as institutions of self-governance were conferred constitutional status by the 73rd and 74th Amendments in the Constitution of India incorporating parts IX and IX-A therein. Part IX comprising of Articles 243 to 243-O deals with Panchayats while Part IX-A comprising of Articles 243P to 243ZG deals with Municipalities. These cases relate to Panchayats and therefore it is not necessary to notice the provisions relating to Municipalities in Part IX-A which are the same as in Part IX. Article 243B lays down that there shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part. There are provisions – which we need not separately notice – relating to composition of

panchayats; duration of panchayats; disqualifications for membership; and elections to the Panchayats, among other matters. The State legislature however is required to make laws on different subjects “subject to the provisions of Part IX”.

It is relevant to point out here that the Rajasthan Panchayati Raj Act 1994 has been enacted and the rules viz Rajasthan Panchayati Raj Rules 1996 or the Rajasthan Panchayati Raj (Election) Rules 1994 - with which we are concerned in these cases - have been framed in fulfilment of the above-mentioned mandate of the Constitution in Part IX. The provisions of Part IX are somewhat akin to the corresponding provisions relating to membership of Parliament and the State Legislature as we shall find soon hereinafter.

In these cases we are concerned with disqualification for membership the provisions in regard to which are contained in Article 243F which may be quoted as under:-

> “**243F Disqualifications for membership:-** (1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat –
>
> (a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no person shall be disqualified on the ground that be is less than twenty-five years of age, if he has attained the age of twenty-one years;

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide."

In the light of the provisions of Article 243F (1)(b) the State Legislature specified the disqualifications in Section 19 of the Act. Section 19 so far as relevant for these cases runs as under:-

"**19.Qualifications for election as a Panch or a member :-** Every person registered as a voter in the list of voters of a Panchayati Raj Institution shall be qualified for election as a Panch or, as the case may be, a member of such Panchayati Raj Institution unless such person -

. . . . . .

(l) has more than two children;

. . . . . .

Provided that –

. . . . . .

(iv) the birth during the period from the date of commencement of this Act, hereinafter in this proviso referred to as the date of such commencement, to 27th November, 1995, of an additional child shall not be taken into consideration for the purpose of the disqualification mentioned in clause (l) and

a person having more than two children (excluding the child, if any, born during the period from the date of such commencement to 27th November, 1995) shall not be disqualified under that clause for so long as the number of children he had on the date of commencement of this Act does not increase;

. . . .

Explanation.- For the purpose of clause (l) of section 19, where the couple has only one child from the earlier delivery or deliveries on the date of commencement of this Act and thereafter, any number of children born out of a single subsequent delivery shall be deemed to be one entity."

The case of the respondents is that a person having more than two children – born after 27.11.1995 – is disqualified for election as a panch/member of any Panchayati Raj Institution and in the event of his election despite such disqualification, he is liable to be ousted form the office in an enquiry under rule 23 of the Rules read with Section 39(2) of the Act.

As stated above, the impugned enquiry in these cases has been held or is sought to be held under the aforesaid provisions. Section 39 which is somewhat similar to clause (2) of Article 243F of the Constitution runs as under :-

"**39.Cessation of membership.-**(1) A member of a Panchayati Raj Institution shall not be eligible

to continue to be such member if he –

(a) is or becomes subject to any of the disqualifications specified in section 19; or

(b) has absented himself from three consecutive meetings of the Panchayati Raj Institution concerned without giving information in writing to such Panchayati Raj Institution; or

(c) is removed from the membership; or

(d) resigns from the membership; or

(e) dies; or

(f) fails to make the prescribed oath or affirmation of the office of membership within three months from the date of election or appointment.

(2) Whenever it is made to appear to the Competent Authority that a member has become ineligible to continue to be a member for any of the reasons specified in sub-section (1), the Competent Authority may, after giving him an opportunity of being heard, declare him to have become so ineligible and thereupon he shall vacate his office as such member:

Provided that until a declaration under this sub-section is made, he shall continue to hold his office."

Rule 23 purportedly framed to give effect to the provisions of sub-section (2) of Section 39 of the Act lays down the procedure for removal; it runs as under :-

"**23.Procedure for removal in case of disqualification-.**(1) Whenever it is represented to, or otherwise brought to the notice of the Chief Executive Officer in case of Panch/Sarpanch and to the State Government in case of Pradhan/Up-Pradhan, Pramukh/Up-Pramukh

or member of a Panchayati Raj Institution, who has been declared to be duly elected as such or who has been appointed as such under any provision of the Act, was not qualified, or was disqualified, for such election or appointment at the time when he was so elected or appointed or has thereafter become disqualified for continuing as such member, the competent authority shall draw up clearly and precisely the alleged disqualification or disqualifications forming the subject of the representation made to it, or otherwise brought to its notice, and shall forthwith issue a notice to such member, which shall :-

(i) Set out the gist of the allegations against him.

(ii) Fix a date, not less than fifteen days after the date of issue of the notice, on which the inquiry shall be made,

(iii)Require him to show cause, for personal appearance or in writing, why his seat should not be declared by the State Government to be or to have become vacant on the ground of his having been not qualified or disqualified, as alleged,

(iv) Call upon him to produce, in denial of the allegation, such documentary or other evidence as may be in his possession, and

(v) Invite him to appear personally, if he so desired, on the date fixed by the notice, and a copy of the notice shall be sent also to the informant, if any.

(2) On the date fixed by the notice, the Chief Executive Officer or the State Government as the case may be shall hear the informant, if any, as well as the member if he appears before him and requests for a personal hearing, shall consider the document and other evidence produced by them in proof or disproof of the allegation or allegations, shall make such further inquiry as he may think necessary, shall record a finding as to the alleged disqualification or disqualifications and shall either order the proceedings to be dropped or declare the seat of such member to have become vacant or make such

other order as may be proper in the circumstances of the case under Section 39 of the Act."

According to the appellants, the election of the panch/member of any Panchayati Raj Institution can be called in question only by way of election petition in terms of Section 43 read with Section 117 of the Act further read with rule 80 of the Panchayati Raj (Election) Rules. Sub-section (2) of Section 39 of the Act is limited to post-election disqualifications as specified in sub-section (1) of Section 39 of the Act and the enquiry under rule 23 therefore would be limited to such post-election disqualification alone.

According to the appellants further, the rule cannot travel beyond the scope of corresponding provision of the Act i.e. Section 39, and therefore any enquiry in respect of pre-election disqualification would be illegal and the rule to the extent it permits such enquiry would be ultra vires the Act.

Sections 43 and 117 of the Act and rule 80 of the Panchayati Raj (Election) Rules (in short, the Election Rules) may be noticed as under :-

"43.Determination of disputes as to elections.- (1) An election under this Act or the rules made thereunder may be called in question by any candidate at such election by presenting in the

prescribed manner to the District Judge having jurisdiction a petition in this behalf on the prescribed grounds and within the prescribed period:

Provided that an election petition presented as aforesaid may, for the reasons to be recorded in writing, be transferred by the District Judge for hearing and disposal to a Civil Judge or Additional Civil Judge (Senior Division) subordinate to him.

(2) A petition presented under sub-section (1) shall be heard and disposed of in the prescribed manner and the decision of the Judge thereon shall be final.

117.Bar to interference by courts in certain matters.- Notwithstanding anything contained in this Act,-

(a) . . . . . .

(b) no election to any Panchayati Raj Institution shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under this Act.

80. Manner of challenging an election under the Act .- An election under the Act or under the Rules may be called in question by any candidate at such election by presenting a petition to the District Judge having jurisdiction within thirty days from the date on which the result of such election is declared, on any one or more of the following grounds :-

(a) that on the date of election, a returned candidate was not qualified or was disqualified, for such election, or

. . . . . .”

It may not be out of place to mention that the provisions of Sections 43 and 117 of the Act are pari materia Article 243-O (b) in respect of election to

Panchayati Raj Institution) and Article 329(b) (in respect of election to Parliament and the State Legislature) and it may be apposite to notice them as under:-

> **"243-O.Bar to interference by courts in electoral matters.-** Notwithstanding anything in this Constitution –
>
> (a) . . . . . .
>
> (b)no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any Law made by the Legislature of a State.
>
> **329. Bar to interference by courts in electoral matters.-** Notwithstanding anything in this Constitution.
>
> (a). . . . . .
>
> (b)no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature."

Section 43, it would appear, in clear and unequivocal terms lays down that election of panch/member of any Panchayati Raj Institution held under the Act/Rules can be challenged by way of election petition before the concerned District Judge, having jurisdiction in the manner, on grounds set out in rule 80 of the

Election Rules. If there was any scope for doubt in this regard, it is dispelled by Section 117 which declares in most unambiguous terms that no election to any Panchayati Raj Institution shall be called in question “except by an election petition presented to such authority and in such manner as provided for” in Section 43 and rule 80.

Section 117, if we may say so, provides answer to the contention of the respondents regarding maintainability of enquiry in respect of pre-election disqualification under rule 23 read with Section 39 of the Act. As seen above, one of the grounds on which the election can be challenged - as set out in clause (a) to rule 80 - is that a returned candidate was not qualified or was disqualified for election on the date of election. Rule 80 thus includes within its ambit the disqualification of the successful candidate on the date of election i.e. a pre-election disqualification as a ground of challenge. Thus where the successful candidate had more than two children – born after 27.11.1995, and was therefore disqualified for election by reason of clause (l) of Section 19 of the Act, his election can be challenged by way of election petition before the District Judge under Section 43 of the Act read with rule 80 of the Election Rules.

The question for consideration is whether the election of the successful candidate can also be challenged before the authority under rule 23 of the Panchayati Raj Rules read with Section 39(2) of the Act ?

Section 39 – as its heading suggests, deals with ‘cessation’ of membership. It lays down that a member of a Panchayati Raj Institution shall not be eligible “to continue” to be such member in the conditions specified in clauses (a) to (f). Clauses (b) to (f), it is clear on a plain reading, visualize post-election eventualities. They refer respectively to absence of the member from three consecutive meetings; removal from membership; resignation; death or failure to subscribe the oath or affirmation of office. These are the grounds which will make the person ineligible to continue to be member of a Panchayati Raj Institution and result in cessation of his membership.

On behalf of the respondents reliance was placed on clause (a) – in particular, the words “is or becomes” - therein and it was submitted that clause “is or becomes subject to any of the disqualifications specified in Section 19” refers to pre-election disqualifications.

According to the counsel for the respondents, where the member “is” subject to disqualifications specified in Section 19, he is not eligible to continue to be member and the membership can be terminated after enquiry in the manner provided in rule 23 of the Panchayati Raj Rules.

Clause (a) in terms no doubt refers to disqualifications specified in Section 19. However, in order to appreciate its true import, the clause may be dissected into two parts – “is subject to” and “becomes subject to any of the disqualification . . . .” So far as “becomes subject to ...” is concerned, the word ‘become’ as an intransitive verb means “start to be”. In the New Shorter Oxford Dictionary, it is defined to mean “come to be” or “begin to be”. The word “becomes” therefore visualizes a subsequent event which renders the person disqualified if he has incurred any of the disqualifications specified in Section 19.

The question is whether “is subject to” refers to and includes past disqualifications as on the date of election. We may straightaway observe that if the legislature intended to include past or pre-election disqualification as ineligibility “to continue to be such member” for the purpose of cessation of membership under

Section 39, it would have used the word “was” in place of “is”. However, we do not wish to take that short route. It is well settled rule of interpretation that the words in a statute are not to be treated as surplusage and the Court normally would not substitute the word by another word. The duty of the Court is to give effect to the law assuming that the word was deliberately and knowingly used by the framers of the statute.

The intention of the legislature appears to be to oust the person from the office if he is presently suffers from any disqualification. We should not be understood as suggesting that notwithstanding some pre-election disqualification the person can continue to be member or panch. As seen above, a pre-election disqualification is a ground specified in clause (a) of rule 80 of the Election Rules on which the election of the returned candidate can be set aside in an election petition under Section 43 of the Act. In these cases, we are concerned with the question whether any order having the same effect and consequence can be passed on account of pre-election disqualification under rule 23.

The word “is” as per different dictionaries means “be”. The words “is subject to” therefore would mean “be subject to”. The word “be” as per the New Shorter Oxford Dictionary, is used in both present and

past tense. As a present indicative it means “am” “are” or “is”. As a past indicative it means “was” “were”. As a full verb it means “have place in the realm of fact; exist; live”. In the traditional sense (Old English) it means “come into existence; come about; happen; occur; take place” and so on. The word “is” therefore nothing different from “becomes” in the context of Section 39.

One of the rules of interpretation of statute is that the meaning of the particular word is to be judged “by the company it keeps”. The rule is known as ‘noscitur a sociis’. In simple words it means that when two or more words which are capable of analogous meaning are coupled together, “they take their colour from each other”. The rule is more comprehensive than the rule of ‘ejusdem generis’. We may usefully quote Justice Gajendragadkar from State of Bombay V. Hospital Mazdoor Sabha, AIR 1960 SC 610 –

> “This rule, according to MAXWELL, means that when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in Words and Phrases. ‘Associated words take their meaning from one another under the doctrine of *noscitur a sociis*, the philosophy of which is that the meaning of the doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim *ejusdem generis’*. In fact the latter maxim ‘is only an illustration or specific application of the broader maxim *noscitur a sociis’ . . . . .*.”

In these premises, we do not find any conflict between “is subject to” and “becomes subject to” in Section 39(1)(a) of the Act.

It is also a settled rule of interpretation that where the statute is capable of more than one interpretation, the one which fits in the context and does not come in conflict with other provisions of the Act should be preferred. While interpreting clause (a) of Section 39(1) of the Act, the provisions of Sections 43 and 117 of the Act and rule 80 of the Election Rules can not be ignored. All these and other cognate provisions have to be harmoniously construed.

If a different interpretation of “is subject to” in clause (a) of Section 39 were to be attempted, it should be kept in mind that sub-section (1) of Section 39 specifies the grounds or reasons for which the member will not be eligible to continue to be a member of a Panchayati Raj Institution. So far as the manner of cessation of membership is concerned, the relevant provision is sub-section (2) in which the words are “<u>has become</u> ineligible to continue to be a member for any of the reasons specified in sub-section (1)”. It lays down that for any such reasons or on any such ground, the

competent authority may after giving him opportunity of hearing, declare him "to have become so ineligible" whereupon the member "shall vacate" his office as such member. In sub-section (2) the word "is" absent.

In view of the provisions of sub-section (2), it is clear that the declaration as to ineligibility of the person can be made by the competent authority only where the member "has become" ineligible for any of the reasons.

Rule 23 no doubt contains words - "was not qualified. . . . for such election or appointment at the time when he was so elected or appointed or has thereafter become disqualified. . . ." The rule, it would appear, prima facie suggests that enquiry under rule 23 can be made in respect of past disqualifications too. This, however, we are inclined to think, will not be in consonance with sub-section (2) of Section 39 of the Act and, indeed, Article 243-F of the Constitution which deals with disqualification for membership. We have seen above that the Gram Panchayat Raj Rules of 1994 have been framed in fulfillment of the mandate of Article 243F of the Constitution. Clause (1) of Article 243F lays down that a person shall be disqualified for being chosen as,

and for being, a member of a Panchayat if he is so disqualified by or any other law made by the legislature of the State. Under clause (2) if any question arises as to whether a member has become subject to any such disqualification, the question shall be referred to the authority prescribed by law. It may be mentioned here that Article 243F(2) is worded on the pattern of Article 103(1) and Article 192(1) with respect to the disqualification for the Members of Parliament and the State Legislature respectively. In both Articles 103(1) and 192(1) the words are “has become” subject to any disqualification. We have explained the import of the words “has become” and held that the expression contemplates disqualification incurred subsequently and not past or pre-election disqualifications. We have also held that there is no apparent conflict between “is subject to” and “becomes subject to” in clause (a) of Section 39(1). We therefore hold that rule 23 to the extent it seeks to extend the enquiry thereunder to pre-election disqualification is beyond the scope and mandate of Section 39(2) of the Act read with Article 243F (2) of the Constitution of India and therefore ultra vires the Act and the Constitution.

In terms of clause (2) of Article 243F, if any

question arises as to whether a member of a Panchayat has become subject to any disqualification mentioned in clause (1), the question is to be referred for the decision of such authority and in such manner as the State Legislature may by law provide. In other words, what can be referred to the authority is the dispute as to whether the person suffers from any disqualification mentioned in clause (1). The result of the election cannot be challenged before the authority. That can be done only by way of election petition before the prescribed forum vide Article 243-O(b) of the Constitution.

While considering the import of Articles 190(3) and 192(1) of the Constitution in Election Commission V. Saka Venkata Rao, AIR 1953 SC 210, a Constitution Bench of the Apex Court held that they are applicable only to disqualifications to which a member becomes subject after he is elected as such, and neither the Governor nor the Commission has jurisdiction to inquire into a member’s disqualification which arose long before his election. Clause (a) of Section 39(1) is similar to Article 190(3) of the Constitution of India. Section 39(2) corresponds to Article 192. Article 243F(2) is similar to Article 192 (1).

It would not be out of place to mention here that Section 39(1) of the Act as it originally stood, was subject to the provisions of Section 40. By amendment (Act 9 of 2000), Section 40 was deleted and the words “subject to the provisions of Section 40” in sub-section (1) of Section 39 were also deleted. Under Section 40 as it then stood, any allegation or doubt as to whether any member of a Panchayati Raj Institution “is” or “has become” disqualified was subject-matter of adjudication by the District Judge after enquiry.

It was submitted on behalf of the appellants that if the authority under rule 23 is vested the power to adjudicate upon the pre-election disqualification which is a ground for setting aside the result of election under rule 80 of the Election Rules read with Section 43 of the Act, it may result in conflicting findings. Whereas in an election petition under Section 43 on the same very ground of any pre-election disqualification in terms of rule 80(a), at the instance of unsuccessful candidate, the District Judge may hold that the returned candidate did not suffer from any such pre-election disqualification, the authority under rule 23 of the Rules may hold to the contrary. We find enough

force in the contention. We do not think that the framers of the Act intended to have two parallel proceedings before different authorities. We have already observed above that the Act has to be harmoniously construed, and any interpretation which is likely to bring the provision in conflict with the other provisions, should not be accepted.

It was submitted on behalf of the respondents that the petition under Section 43 of the Act can be filed only by any unsuccessful candidate, and therefore a third party cannot question the result of election. According to counsel for the respondents, if the unsuccessful candidate does not challenge the election – in collusion with the successful candidate or otherwise – the election may never be called in question at all even though the person was disqualified for election. The submission is well-founded but does not improve the case of the respondents. The fact that the third party cannot challenge the election of the successful candidate despite his disqualification under Section 43 does not mean that the election cannot be challenged at all. Any person can approach the High Court under Article 226 of the Constitution and seek ouster of the successful candidate from the office by a writ of quo warranto. For seeking writ of quo warranto, it is not necessary that a

person should have locus standi i.e. personal interest in the subject-matter. Writ of quo warranto can be issued if the Court is satisfied that the person was not qualified for the office/post and he is a usurper.

In K. Venkatchalam Vs. A.Swamickan, AIR 1999 SC 1723 = (1999) 4 SCC 526, it was held that where recourse to election petition was not taken within the period prescribed, the petition for a writ of quo warranto was maintainable. That was a case in which the appellant was not an elector as per the electoral roll and was therefore not qualified to seek election.

As indicated at the outset, conflicting views have been expressed by different Benches of this Court necessitating reference of these cases to the Larger Bench, counsel for the parties naturally placed reliance on the judgments which support their case.

On behalf of the appellants, reliance was placed, amongst others, on Jagram Vs. State of Rajasthan, 2001(5) WLC (Raj.) 42; Bheru Singh Rathore Vs. State of Rajasthan, 2003(3) WLC (Raj.) 481; Smt. Prittam Rana Vs. The State of Rajasthan, 2004 WLC (Raj.) UC 129. On behalf of the respondents on the other hand, reliance was placed on Mohanlal Vs. State of Rajasthan, 2000(3) RLR 16; Mohanlal Vs. State of Rajasthan (D.B. Civil Special Appeal (W) nos. 530/2001 and 674/2001) and Smt. Sushila

Vs. The State of Rajasthan (D.B. Civil Special Appeal (W) no.289/2002).

We have gone through the judgments. In (second) Mohan Lal (supra), a Division Bench of this Court held that –

> ". . . . notwithstanding the remedy of election petition under section 43 read with rules 80 and 81 of the election rules more particularly when such remedy is available only to the candidates at such election and such candidates may or may not invoke such remedy. Even if such remedy is invoked and election dispute is pending, it is no embargo against the competent Authority to take action under section 39, otherwise the whole purpose and legislative intent of section 39 may be defeated and rendered otiose."

In Sushila Devi (supra) it was observed –

> "In our opinion, the controversy which has been sought to be raised is fully covered by the decision rendered by the Division Bench of the Principal seat of the High Court at Jodhpur in the case of Mohan Lal Versus State of Rajasthan and others (supra), wherein the court has held that the disqualification suffered by the candidate at the time of election is a valid ground to be taken note of for taking action under section 39 by the competent authority notwithstanding the remedy of election petition under section 43 read with rules 80 and 81 of the Election Rules and even if such remedy is invoked and election dispute is pending, there is no embargo against the competent authority to take action under section 39, otherwise the whole purpose and legislative intent of section 39 may be defeated and rendered otiose. Inquiry under section 39 is limited to the question of qualification or otherwise – whereas the election dispute under section 43 can be raised on other grounds as well section 39 is a special provision to take care of specific wrong and section 43 is a general provision to raise election dispute on more than one grounds and is available to the candidates at such election,

this special provision takes care of the principle that every wrong has a remedy and no wrong can be left without remedy . . . . . .”

In Bheru Singh Rathore (supra), another Division Bench of this Court however held to the contrary as under :-

“21- . . . . . .on the basis of decision of the Supreme Court in Saka Venkata Rao’s case (supra), it must be held that Art.243F of the Constitution read with Ss.19 and 39 of the Act of 1994 on the one hand, dealing with disqualifications incurred before or after the election as a member of Panchayat and Art. 243-O (b) on the other hand, dealing with challenge to election of any member of the Panchayat, stand independently of each other since they present different and separate remedies for dissimilar situations . . . .

23- . . . . Applying the ratio of the decision of Supreme Court in Saka Venkata Rao’s case and K. Venkatachalam’s case, we are of the view that section 39(2) of the Act of 1994 covers a case where a member of a panchayat acquires disqualification after his election. Where a member was disqualified ab initio i.e. to say he was disqualified before the election, action under section 39(2) of the Act of 1994 can not be taken against him. . . . .”

In view of the above discussions and for the reasons mentioned hereinbefore, we regret our inability to accept the decision in Mohan Lal or Sushila Devi and other cases taking similar view as correct. We endorse the views expressed in Bheru Singh Rathore and other cases.

The question framed at the outset is thus answered in the negative, and it is held that a pre-election disqualification can be adjudicated only in an election petition before the District Judge under Section 43 of the Act read with rule 80 of the Election Rules and can not be adjudicated by the authority under rule 23 of the Rules.

In the result, Special Appeal no.236/2006 preferred by the successful candidate is allowed and the order of the learned Single Judge impugned therein is set aside; while Special Appeal nos.276/2006 and 289/2006 by the complainant and the State are dismissed. The writ petitions may be listed before the Single Bench for disposal in accordance with this judgment.

[AJAY RASTOGI],J. [ASHOK PARIHAR],J. [S.N. JHA], CJ.

Skant/-